

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2173 of 1983

WITH

SPECIAL CIVIL APPLICATION No 8842 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DR B C PARIKH & ORS.

Versus

AHMEDABAD MUNICIPAL CORPN.

Appearance:

MR KS ACHARYA for Petitioners

MR SM MAZGAONKER for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/12/96

ORAL JUDGMENT

The Special Civil Application No.8842 of 1992 was ordered to be heard with Special Civil Application No.2173 of 1983 and as such, both the petitions were taken together for hearing. The facts and grounds of these petitions are common and as such, the same are being disposed of under this common order.

Special Civil Application No.2173 of 1983:

2. There are in all 21 petitioners in this Special Civil Application. The petitioners are working as Doctors in different dispensaries and maternity homes of the respondent-Corporation since last about 12-20 years. The petitioners have enclosed a statement regarding their service particulars as annexure 'A' to this petition. The petitioners are known as Medical Officers (M.O.s in short) who are working in the dispensaries of the respondent-Corporation and Lady Medical Officers (L.M.O.s in short) who are working in the maternity homes of the respondent-Corporation. Since 1956 the grades of all the doctors i.e. M.O. and L.M.O. were fixed by the respondent. In 1963 these grades were reconsidered and the grades of the doctors whose qualifications were M.B.B.S. and/or equivalent to M.B.B.S. were fixed at Rs.200-400. In the year 1964, the grades of those doctors, M.B.B.S. or equivalent were fixed at Rs.290-735. There was no distinction between the grades of M.O., L.M.O. and Resident Medical Officer (R.M.O.) and M.O. in-charge BCG T.B. Hospital and they all were given same grades from 1956 till 1980. Thus, for all 25 years, all the doctors working in the Ahmedabad Municipal Corporation by whatever names were given similar scales and were similarly treated in all other respects by the respondent.

3. The respondent thereafter passed a resolution No.231 dated 25th April 1980 whereby for the first time in the long history of thirty years the scale of M.O. who is termed as R.M.O. has been considered and fixed at Rs.900-1500 and for those who have completed 10 years' service, their pay scale has been fixed at Rs.1100-1600. So, as per the case of the petitioners, a discrimination is sought to be made in a class by dividing the same in two classes of R.M.O. and M.O. The petitioners filed this petition before this Court claiming that all the M.O.s having qualification of M.B.B.S. or its equivalent should be given the same pay scale as has been prescribed for R.M.O. as for the last 30 years they were enjoying the same pay scale. The respondent-Corporation has filed reply to the Special Civil Application and therein justification has been given out that the post of R.M.O. at different General Hospitals are the posts of higher responsibilities and higher qualification is prescribed for that post and as such higher pay scale has been prescribed for those posts. On the basis of this, the Corporation justified prescription of higher pay scale for the post of R.M.O.s.

Special Civil Application No.8842 of 1992:

4. In this petition there are two petitioners and in

sum and substance their grievance is also identical to that of petitioners in Special Civil Application No.2173 of 1983. The petitioners in this Special Civil Application are the doctors who are holding the post of M.O. and they are possessing qualification of M.B.B.S. or its equivalent, and they are also challenging the action of the respondent of giving higher pay scale to R.M.O.s.

5. Shri K.S.Acharya, learned counsel for the petitioners contended that when all the doctors with qualification of M.B.B.S. or its equivalent irrespective of the fact whether they are M.O.s., L.M.O.s, R.M.O.s, or in-charge of BCG T.B. Hospital were given the same pay scale for the last 30 years, the abrupt change of pay scale giving higher pay scale to R.M.O.s only is clearly a hostile discrimination. It has next been contended that the qualification for the post of R.M.O. and M.O. may be different and for the former post, the qualification may be higher, but the fact is that for the last 30 years, these distinction has not been made and all the Medical Officers with qualification of M.B.B.S. and/or equivalent have been given the same pay scale.

6. On the other hand, the learned counsel for the respondent contended that as the post of R.M.O. is a post of higher responsibility and for appointment thereof higher qualification is prescribed, the Corporation has resolved to give higher pay scale to the holders of the post of R.M.O. and further higher pay scale for those who have completed 10 years' service. It has further been contended by the learned counsel for the respondent that the seniority of R.M.O. is separate from that of M.O. and L.M.O. etc. The appointments are made to the post of R.M.O. by promotion from the post of Asstt.R.M.O. or by Selection Committee, as required under the provisions of the Bombay Provincial Municipal Corporation Act. In view of this fact, no parity could have been claimed by the petitioners in the matter of pay scale equivalent to that of R.M.O.s.

7. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

8. It is not in dispute that the post of R.M.O. is a promotional post and each general hospital consists of only one such post. It is also not disputed by the learned counsel for the petitioners that the post of R.M.O. carries higher responsibilities. The qualification prescribed for the appointment to the post of R.M.O., M.O. or L.M.O. has been given in the reply

to the Special Civil Application No.2171 of 1983, which reads as under:

The qualifications for the purpose of appointment to the post of R.M.O.:

"M.B.B.S. or other equivalent degree of a recognized Indian or Foreign University with 3 years standing experience in anaesthesia will be preferred."

As regards Medical Officer (M.O.) or Lady Medical Officer (L.M.O.) the qualifications laid down are:

"M.B.B.S. or L.C.P.S. or L.M.P. or D.A.S.F. or G.F.A.M. or B.A.M.S."

The learned counsel for the petitioners does not dispute the qualifications aforesaid prescribed for different posts. For the post of R.M.O., qualification of M.B.B.S. or other equivalent degree of a recognized Indian or Foreign University with three years' standing experience is prescribed. It has further been provided that experience in Anaesthesia will be preferred. So, on the post of R.M.O., only a doctor possessing qualification of M.B.B.S. or any other equivalent degree of a recognized Indian or Foreign University, with three years' standing experience is eligible, whereas for the post of M.O. & L.M.O. doctor with qualification of M.B.B.S. or L.C.P.S. or L.M.P. or D.A.S.F. or G.F.A.M. or B.A.M.S. is eligible. The qualification of L.C.P.S. etc. may not be qualification equivalent to M.B.B.S. degree, but still it is one of the qualifications prescribed for the appointment to the post of M.O. or L.M.O. For the appointment to the post of M.O. or L.M.O., no experience whatsoever is required. Even if we accept the case of the petitioners for time being that for all the years, the post of R.M.O., M.O. & L.M.O. was held by doctors with qualification of M.B.B.S. or equivalent and were treated same by the Corporation, then too the Corporation was within its competence to prescribe different pay scale for these posts on the basis of qualifications. It is a settled law that on the basis of qualification, different pay scale can be prescribed for different posts, and any reference if needed, then it may have to the decision of Supreme Court in the case of Shyam Babu Verma & Ors. v. Union of India & Ors., reported in 1994(2) SCC 521. The decision of the Corporation to prescribe higher pay scale for the post of R.M.O., in view of this decision of Supreme

Court, does not call for any interference of this Court. The learned counsel for the petitioners has also not very seriously pressed this claim after going through the qualifications prescribed for the different posts and the decision of Supreme Court in the case of Shyam Babu Verma & Ors. v. Union of India & Ors. (supra).

9. However, I do not find any justification in the action of the respondent in not giving higher pay scale to Medical Officers (M.O.s) and Lady Medical Officers (L.M.O.) etc. on completion of their 10 years' service as it has been given to R.M.O.s. The higher pay scale prescribed to the R.M.O.s who have worked for 10 years, is not having any reference to qualification. It is only for experience on the post, the benefit is given. The reason to give such benefit may be stagnation because it is not the case of either party that sufficient avenues of promotion are provided from the post of R.M.O. But how a discrimination can be made in the matter of giving of higher pay scale to the doctors who have worked for 10 years, i.e. M.O.s, L.M.O.s etc. The learned counsel for the respondent has failed to give out any justification in not extending the benefit of higher pay scale to M.O.s, L.M.O.s etc. on their completion of 10 years' service. The only justification given is that the posts of R.M.O., M.O., L.M.O. etc. are different posts and as such it cannot be said to be a class itself. I do not find any justification in this submission of the learned counsel for the respondent. Prescription of higher pay scale on the basis of qualification may be justified, but to give benefit of 10 years' service for further higher pay scale only to R.M.O.s and not to other doctors is certainly a discrimination. The learned counsel for the respondent has hotly contended that initial burden lies on the petitioners to make out case of discrimination, but in the present case, the apparent denial of benefit of higher pay scale on completion of 10 years' service, to M.O.s, L.M.O.s etc., on the fact of it seems to be unreasonable and arbitrary. In such case, the burden heavily lies or falls upon the respondent-Corporation to justify the aforesaid discrimination. The Corporation has failed to give out any nexus with the object to be achieved by prescribing higher pay scale for R.M.O.s only on completion of 10 years' service. The only conclusion which follows from aforesaid discussion is that the Corporation has failed to give out any justification whatsoever not to extend the benefit of higher pay scale to M.O.s, L.M.O.s and other medical officers on completion of their 10 years' service.

10. In the result, these Special Civil Applications

succeed in part. However, the Resolution passes in the present case prescribing the higher pay scale for the post of R.M.O.s. as well as prescribing next higher pay scale for those R.M.O.s who have completed 10 years' service though maintained, but at the same time non prescription of any higher pay scale for M.O.s., L.M.O.s etc. by the Corporation, on their completion of 10 years' service, is declared to be arbitrary and unjustified. The respondent-Corporation is hereby directed to look into the matter afresh after hearing the petitioners and prescribe a higher pay scale commensurate to the qualifications, to be given to M.O.s, L.M.O.s etc. on completion of 10 years' service. This exercise should be undertaken within a period of three months from the date of receipt of certified copy of this order. Those petitioners who have completed 10 years' service as M.O.s, L.M.O.s etc. shall be entitled for the higher pay scale as prescribed with effect from the date of filing of these Special Civil Applications. It is hereby clarified that the entitlement for higher pay scale should not be only on the basis of completion of 10 years' service, but subject to suitability and on the basis of service record of the concerned officer. Rule made absolute in aforesaid terms in both the Special Civil Applications. No order as to costs.

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